

COMPLIANCE BOARD OPINION NO. 99-9
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July 14, 1999

Mr. Scott Blanchard
Carroll County Times

The Open Meetings Compliance Board has considered your complaint dated May 10, 1999, in which you alleged that the Town of Hampstead violated the Open Meetings Act by failing to disclose the names of two people who were present at a closed meeting held on March 24, 1999. For the reasons stated below, the Compliance Board finds that the Act was not violated.

I

Complaint and Response

The Hampstead Town Council closed its session on March 24, 1999, to discuss the “relocation or expansion of a business” One exception in the Open Meetings Act, in §10-508(a)(4), allows a meeting to be closed for this reason, and your complaint did not challenge the Council’s action in closing the meeting.

According to your complaint, the violation occurred when the Council released the minutes of its next open meeting. Under §10-509(c)(2), these minutes are to contain, among other items, “a listing of the persons present at the prior closed session.” Your complaint pointed out that the statement about the March 24 session did not name two individuals who were present. Instead, the statement described them as “a private real estate developer and a potential tenant for the proposed development.”

In a timely response on behalf of the Town, Mayor Christopher M. Nevin denied that this limited disclosure violated the Act. Mayor Nevin explained that the Town had been approached by the Carroll County Director of Economic Development about a proposed tenant for a large industrial parcel immediately outside the Town

This business would need water service in fairly significant amounts, and wished to discuss whether the general area would be

able to provide the quantity of water necessary for its purposes. The Town set a meeting for March 24 for this discussion, which included the topics described in the minutes which are the subject of the complaint During the meeting the representatives of the business reiterated their desire that the business not be identified at the time, primarily so that its employees not hear of a possible move prematurely. This, coupled with the sensitive issue of water supply, were the primary reasons that neither the Town nor the business wished the project to be specifically identified at this very preliminary stage of the development process.

This desire to avoid specific identification of the business, Mayor Nevin continued, led to the more general description in the statement about the March 24 meeting:

It is the Town's position that providing the names of the land developer and potential tenant would clearly identify the business contemplating moving to this location, possibly affecting both the valuation of the business and its relationship with its employees. Further, the Town is currently negotiating the acquisition of land which we believe can provide additional water sources; identifying the prospective user would also identify the approximate amount of water it would require, thereby possibly driving up the price of the land we need.

II

Analysis

Once a closed session occurs, a public body is required by §10-509(c)(2) of the Act to include certain information in the minutes of its next open meeting:

- (i) a statement of the time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of authority under the subtitle for closing the session; and

(iv) a listing of the topics of discussion, persons present, and each action taken during the session.

A “listing of the ... persons present” would ordinarily be done by naming or otherwise specifically identifying them. Yet, the statutory text does not explicitly require that the persons present be named. The text is open to the interpretation that, under limited circumstances, the “persons present” may be “listed” by more general descriptions, if direct identification would be inconsistent with other provisions of the Act or would frustrate any of its underlying objectives.

In the Compliance Board’s opinion, a more general description may be used if direct identification would, to quote the Attorney General, “negate the confidentiality that the closed session was meant to preserve.” Office of the Attorney General, *Open Meetings Act Manual* 16 (1997). A public body is not required to divulge in its minutes sensitive information that warranted the invocation of an exception in the first place.¹ For example, suppose that a town council was considering whether to fire an employee and agreed to let the employee come to the closed meeting to plead his or her case. Surely the General Assembly, in requiring that the town council subsequently disclose who was present, did not intend to mandate identification of the employee. To do so would be altogether inconsistent with the exception that permits a closed meeting to discuss disciplinary actions against particular employees. *See* §10-508(a)(1). Naming the employee would negate the objective underlying the exception, to protect the privacy of the employee.²

Similar reasoning applies here. The exception that the Hampstead Town Council relied on, §10-508(a)(4), allows a closed session to “consider a matter that concerns a proposal for a business or industrial organization to locate, expand, or remain in the State.” As we observed in a prior opinion, this exception “reflects the Legislature’s understanding that some businesses might be deterred from making proposals about relocation, expansion, or retention of an existing facility if all such discussions were open to public view.” Compliance Board Opinion No. 93-3 (February 24, 1993), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 28, 29. As Mayor Nevin pointed out, a

¹ *See* Compliance Board Opinions No. 95-1 (April 13, 1995), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 110; No. 94-5 (July 29, 1994); *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 73; and No. 92-5 (December 22, 1992), *reprinted in 1 Official Opinions of the Maryland Open Meetings Compliance Board* 16.

² In this example, the town council would comply with its disclosure obligation by stating that among those present was “a town employee concerning whom a personnel action was considered.”

business might want its preliminary discussions about relocation kept secret to avoid a harmful impact on employee morale. Premature disclosure might affect a business' competitive position in a variety of other ways. It also might harm a public body's effort to woo a business.

Therefore, in our opinion, if a meeting is properly closed under the "business relocation" exception, the subsequent disclosure about the meeting may omit the name of the business considering a relocation. The Council complied with the Act when it listed the business representative participating the meeting as a "potential tenant" of a real estate development, rather than naming the individual or the business. Likewise, the Council was permitted to omit specific identification of the land developer if, as Mayor Nevin put it, doing so would "clearly identify the business contemplating moving to this location"³

III

Conclusion

In summary, the Open Meetings Compliance Board finds that the Hampstead Town Council's subsequent disclosure about its closed session of March 24, 1999, complied with the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb

³ While a public body does not comply with the Act by providing only uninformative boilerplate, here the Council provided a reasonably detailed description of those present and the nature of the discussion, without forfeiting the statutorily recognized need for confidentiality, which justified the closed session.